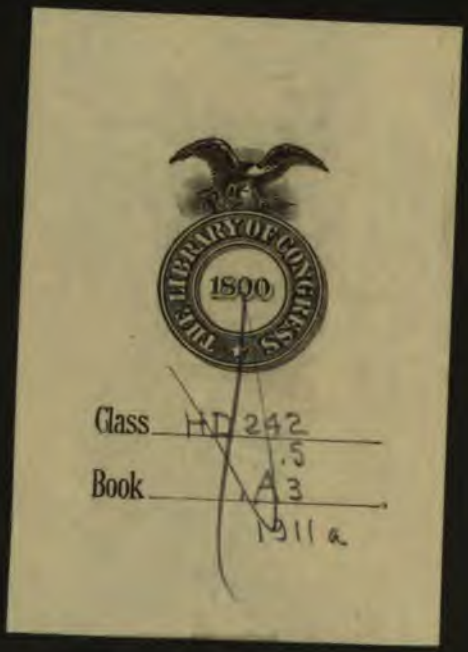
Hearings on H. R. 31437

To protect the locators of oil and gas lands who have effected an actual discovery of oil or gas on the public land of the United States.



HEARINGS

U.S., Cong., House.

HELD BEFORE THE COMMITTEE ON THE PUBLIC LANDS OF THE HOUSE OF REPRESENTATIVES

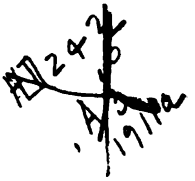
JANUARY 21, 1911

ON

H. R. 31437

TO PROTECT THE LOCATORS IN GOOD FAITH OF OIL AND GAS LANDS WHO SHALL HAVE EFFECTED AN ACTUAL DISCOVERY OF OIL OR GAS ON THE PUBLIC LANDS OF THE UNITED STATES, OR THEIR SUCCESSORS IN INTEREST

WASHINGTON
GOVERNMENT PRINTING OFFICE
1911



PROTECTION OF LOCATORS ON OIL AND GAS LANDS.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC LANDS,
Saturday, January 21, 1911.

The committee met at 10.30 o'clock a. m., Hon. Frank W. Mondell (chairman) presiding.

The CHAIRMAN. The hearing this morning is on H. R. 31437, a bill to protect the locators in good faith of oil and gas lands, etc. Mr. Secretary Pierce, of the Interior Department, is here, and perhaps it will be well to hear from him first as to the necessity for this legislation or for something in the line of the proposed legislation.

Mr. PIERCE. If you will permit me, I would prefer to hear first from the California oil men or their representatives as to the necessity for this legislation.

The CHAIRMAN. We will hear from Mr. Andrews.

STATEMENT OF MR. LEWIS W. ANDREWS.

Mr. ANDREWS. Mr. Chairman, I will endeavor to confine my remarks to the scope of the bill and make them as brief as possible. If the members have not read the bill it might be well for me to do so, and thus have the matter before the committee. The bill reads as follows:

A BILL To protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where an association of persons severally qualified to occupy, explore, locate, and purchase public lands under and pursuant to the mining laws of the United States shall heretofore or hereafter have entered thereunder into possession of such unappropriated lands as contain petroleum or other mineral oils or gas, and are chiefly valuable therefor, not at the time of such entry into possession covered by an executive withdrawal pursuant to the provisions of the act approved June twenty-fifth, nineteen hundred and ten, entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," or otherwise reserved by or under statutory authority, claiming under such possession not in excess of twenty acres for each individual of such association, and in all not exceeding one hundred and sixty acres in any claim so initiated, and thereafter such association of persons, or their successor or successors in interest, shall have diligently and in good faith complied with the provisions of the mining laws, and by drilling or other appropriate exploration work shall have effected an actual discovery of oil or gas within the limits of such claim, such association of persons, or their successor or successors in interest, shall be entitled to apply for and receive patent for the whole claim, as in other cases, in the manner and upon the terms and conditions provided by the mining laws, and no assignment or conveyance of any undivided interest or interests in such claim to any one or more of the persons of such association, or to any other qualified person, association of persons, or corporation, prior to discovery shall impair the right to patent: *Provided*, That the foregoing provisions shall not be construed to apply to any such claim upon lands chiefly valuable for minerals other than oil and gas.

It has been the law for a great many years that placer-mining claims may be located by an individual to the extent of 20 acres, and associations of persons of two or more, up to eight, may locate consolidated claims to the extent of 20 acres for each member of the association, but not exceeding 160 acres in any one consolidated claim.

Under the law of 1897 the placer-mining laws were made applicable to oil lands, so that the lands which contain petroleum and mineral oils are mineral lands and may be located under the placer laws. It has been the custom in the State of California from the time of the earliest of oil locations for the locations to be made by an association of persons of two or more up to eight. After having made the location, in a majority of cases, I may say, it is the universal custom for such association of persons to make a conveyance of such consolidated claims either to an individual or to trustees for the benefit of the locators, or to a corporation, which is composed usually, in the outset, of the original locators. The corporation or other grantee then proceeds with the exploration work by drilling. Before actual drilling operations can be commenced thousands of dollars must be expended in securing water, erecting buildings, and assembling machinery. The discovery of minerals in oil claims is always a serious question. Under the placer-mining laws, before they were made applicable to oil, the proceedings were usually simple and inexpensive. The locators would go on the ground with pick and shovel and by a few hours' or a few days' work make discovery of precious metals. This was an easy task.

The location was initiated by posting notice, marking the boundaries, recording of notice, etc., and was perfected by the discovery. The rights of miners to their mining claims have been recognized by all of the courts as property rights; rights which could be assigned, could be inherited, could be encumbered, and otherwise treated as property. In the case of oil claims the discovery is only secure after long and diligent effort and the expenditure of enormous sums of money. I think it is a fair statement that the average cost of sinking the discovery well is from twenty-five to fifty, seventy-five or a hundred thousand dollars. It has been held by our courts, and I think it is the rule, that the outcropping of the sand or the seepage of oil is not a sufficient discovery on which to base the perfection of a claim, but it is necessary to drill a well to the oil-bearing strata, which usually lay 1,000 to 3,000 or 4,000 feet in depth, and thus demonstrate the mineral character of the property.

It has been the custom, as I have said, from the earliest days of oil locations, for a conveyance to be made, before discovery, to a corporation, and for the grantee to proceed with the work of exploring for minerals, and expend the large sums of money incident to the discovery. Finally, when oil has been discovered in paying quantities, such corporation, or other grantees of the original locators, have applied for patent and have received patents. I understand that the first patent that was issued for oil lands was issued to parties other than the original locators, and at a time some two years subsequent to the last holding by the original locators.

The CHAIRMAN. I can bear personal testimony to that fact.

Mr. ANDREWS. From that time down to the present time, with one or two exceptions, the original locators have made conveyances prior

to discovery to a corporation, and the corporation, after making discovery, has applied for and received patent. In the great San Joaquin Valley, in the State of California, where the richest oil fields in the world are found, there have been issued by the United States Government some 174 or 175 patents covering from 80 to 160 acres each, and of that number only one was issued to the original locator. The other 173 or 174 were issued to the grantee or grantees of the original locators.

The CHAIRMAN. You have gone into the records very carefully to determine the number of cases in which the patent was issued to the transferees of the original locators. Have you gone into the cases with a view of determining in how many instances the actual discovery of oil was made after the transfer from the original locators? As I understand it, it would be very difficult to determine that as that has not been a question at issue in the department.

Mr. ANDREWS. Of course the only records that would show that are the departmental records.

The CHAIRMAN. That is really the point at issue, because the department, I take it, does not hold that there can not be any number of transfers after discovery, the holding in the Yard decision, as I understand it, being that if the original locators transferred prior to the discovery, their transfer was in fact an abandonment. But the department is not questioning transfers made subsequent to discovery.

Mr. ANDREWS. I think that in every case—in practically every case—where a patent has been issued the transfer was made before the discovery. That is necessarily so, because the prosecution of the work of exploring for minerals, the putting down of wells, etc., requires an enormous expenditure of money.

Mr. PARSONS. Would that fact appear in the papers in the cases in the department?

Mr. PIERCE. They would show the date of the transfer; the application shows the date of the discovery.

Mr. SHORT. The department records would show——

The CHAIRMAN. If the papers in each case do not indicate the actual date of discovery, there would be no way of determining, unless we get it indirectly, and not as a necessary part of the proof. But this is your proposition, as I understand it, that in a very great majority of cases there have been transfers before the patent was issued?

Mr. ANDREWS. Yes, sir.

The CHAIRMAN. And your knowledge of the oil situation leads you to believe that in a great majority of cases these transfers have also been made in advance of the actual discovery of oil, but that it is impossible to determine that fact by looking at the papers in the actual cases, because the department has never raised that question, whether the discovery was made by or on behalf of the original locators or by or on behalf of their transferees. That question was never raised in the department until the Yard case.

Mr. ANDREWS. That is the situation, but in addition to that it is my understanding that in a large majority of cases the record will show the date of the discovery.

Mr. PIERCE. It possibly might in some cases, but it is a matter of fact that it was not necessary to inquire into.

The CHAIRMAN. I doubt if that would be shown in many cases.

Mr. ANDREWS. My understanding is that that is an issue in connection with the making of proof, and that they had to show the date of discovery.

Mr. PIERCE. The presumption is this: That the discovery was made at the time of the location, and if everything is regular, we do not go behind that.

The CHAIRMAN. Then the date of discovery would be shown by the survey when application is made for proof.

Mr. SHORT. In order to meet the rulings of the department we must show oil production; the mere statement of discovery would not be sufficient. We must show the actual production of petroleum.

Mr. TAYLOR. In western Colorado they have to go down 2,000 feet to make the discovery, and the original locators must make some financial arrangement before they can do it. Now we want some remedy for the protection of these assignees who make the discoveries of oil.

Mr. ANDREWS. As I have stated, the custom of assignment before discovery has been uniform in the State of California, and I think that everywhere, in every State where oil has been produced—in Colorado, Utah, and Montana—the custom has been the same. The practice has been recognized by the supreme court of our State in a number of cases, and it is the law of our State. Of course that is not binding on the department. The decisions of our court are simply binding on the citizens of our State in such cases as may arise in our State courts; but that is the law of our State and that is the custom.

Mr. ROBINSON. The transfers made before discovery are made after the preliminaries of location have been complied with, such as the marking of boundaries—after all that has been done?

Mr. ANDREWS. Yes, sir.

Mr. PARSONS. Is it not intended for the purpose of raising money?

Mr. ANDREWS. Yes, sir; it may be contemplated by the original locators that they will form a corporation and transfer the property to the corporation——

The CHAIRMAN. There is nothing in the mining laws which prohibits the transfer immediately after location, or which prohibits a man from making the location with a view to making a transfer.

Mr. ANDREWS. Now, to be brief, a year ago last July, I think it was, or sometime within the recent past, the Yard case came before the department. That was a gold placer case. Judge Pierce rendered the decision and can give the details of it. The effect was that where a location of a placer gold mining claim is made by eight individuals and these eight made a conveyance to a corporation before discovery and a discovery was subsequently made, the corporation can perfect its claim to only one claim of 20 acres and no more, losing seven claims of 20 acres each, amounting to 140 acres. The reasoning, as I gather from reading the case, is that since it requires eight individuals to initiate a 160-acre claim, it should also require eight to perfect the location by discovery, and therefore, in order to secure a patent to the claim of 160 acres, there must be eight people in the title at the time of the discovery.

The CHAIRMAN. And does not the decision also hold that the eight must be the original eight in order to hold?

Mr. ANDREWS. That was my impression.

The CHAIRMAN. Perhaps that is not material.

Mr. ANDREWS. That was my impression, that they had no transferable interest. I gained the impression from the opinion of the department that prior to the discovery there was no transferable interest. The courts of our State, however, have held that there was a transferable interest, and we have proceeded along that line. But recently the case of the Bakersfield Fuel Oil Co. has been presented to the department. Judge Pierce was good enough to go to the State of California for the hearing in that case, and, in addition to hearing the arguments of counsel, he also heard the statements of a number of oil operators, and I think he has become quite familiar with the facts. In that case this question was squarely presented to the department: Is the ruling in the Yard case applicable to oil lands; that is to say, where the locators have located their claim to 160 acres and have made a conveyance to a corporation before discovery can that corporation, after discovery, secure a patent to more than 20 acres? I have in my hand the advance sheets of the decision in that case. May I refer to this decision, Judge Pierce?

Mr. PIERCE. No, sir; I did not intend that you should. I was going to use that as the basis of my remarks. I will put it in the record myself.

Mr. ANDREWS. Then I will refrain from referring to that case.

Mr. PIERCE. I shall present it in connection with my views. With reference to your statement that we have followed the law in the Yard case, your claim is correct.

Mr. ANDREWS. It is our understanding that the decision in the Yard case has been applied by the department to the oil situation, and while there were those of us who thought there was ground for differentiation between the gold and oil placer claims, the department having ruled on that subject eliminates our contention.

We are now in a position where we must seek relief at the hands of Congress, and in seeking this relief I will state very briefly some of the reasons for it. Our committee, having made careful investigation, find that there has been invested in oil claims that have not yet been patented and where conveyances have been made before discovery the enormous sum of $20,000,000 in actual operating expenses, and in addition to that there has been paid on account of the purchase of locators' rights and the like an additional sum, estimated to amount to $30,000,000, the aggregate investment at this time being at least $50,000,000. Seven-eighths of this is jeopardized by the decision in the Yard case and the application of that decision to the oil cases. There are in the neighborhood of 275 or 280 different corporations operating in the San Joaquin Valley alone which are affected directly by these decisions. Each of these corporations has a large number of stockholders, and it is estimated that from 50,000 to 75,000 people in all parts of the country have investments which are imperiled. In addition to that there are numerous corporations operating under mining claims in other portions of the country, not only in California, but in other States—in Colorado, Utah, Montana, and Wyoming.

The CHAIRMAN. We may want to ask you some questions a little later. If you have concluded the outline of your argument, you may extend it in the record.

Mr. GRONNA. Why do they wish to take in 160 acres?

Mr. ANDREWS. I am glad that question is asked. The oil field is distinct from the gold-mining field. The oil may be 4,000 feet beneath the surface, and it would be a very difficult thing to secure financial backing from business men for exploration for that which is is so far hidden from view and so uncertain as to results unless there is a sufficient reward for them. I think I may state the case to be that, except possibly in the very rich and proven territory, no financiers would advance money for exploration work on only 20 acres.

Mr. GRONNA. That would be true of oil but not of gold.

Mr. ANDREWS. That applies exclusively to oil and gas. In mining for gold you can make your discovery possibly at the grass roots. With oil it is entirely different, and in many cases it is not believed that 160 acres is an adequate reward for the uncertainty and expense of search. I think it may be stated fairly that no one except in proven territory, and rich proven territory, would go to the expense necessarily attendant upon the drilling for oil unless he could have the assurance of securing at least 160 acres after the oil was found.

STATEMENT OF HON. FRANK PIERCE, FIRST ASSISTANT SECRETARY OF THE INTERIOR.

Mr. PIERCE. Mr. Chairman, the Interior Department has sent a report to this committee on Senate bill 9818, recommending the passage of the bill, with the following amendments: In line 6, page 1, strike out the words "or hereafter"; also strike out lines 10, 11, 12, and 13, on page 1, and line 1 on page 2, so that the bill as amended would read as follows:

A BILL To protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where an association of persons severally qualified to occupy, explore, locate, and purchase pulic lands under and pursuant to the mining laws of the United States shall heretofore have entered thereunder into possession of such unappropriated lands as contain petroleum or other mineral oils or gas, and are chiefly valuable therefor, not at the time of such entry into possession covered by any withdrawal, claiming under such possession not in excess of twenty acres for each individual of such association, and in all not exceeding one hundred and sixty acres in any claim so initiated, and thereafter such association of persons, or their successor or successors in interest, shall have diligently and in good faith complied with the provisions of the mining laws, and by drilling or other appropriate exploration work shall have effected an actual discovery of oil or gas within the limits of such claim, such association of persons, or their successor or successors in interest, shall be entitled to apply for and receive patent for the whole claim, as in other cases, in the manner and upon the terms and conditions provided by the mining laws, and no assignment or conveyance of any undivided interest or interests in such claim to any one or more of the persons of such association, or to any other qualified person, association of persons, or corporation, prior to discovery shall impair the right to patent: *Provided*, That the foregoing provisions shall not be construed to apply to any such claim upon lands chiefly valuable for minerals other than oil and gas.

The amendment is practically the striking out of these lines, so that it will read, commencing at line 9, "not at the time of such entry into possession covered by any withdrawal." I do not know that our report covers that word "any," but it should be placed in lieu of the word "executive," in order that the department may protect those on the withdrawals made by the Secretary of the Interior under the law of 1899, before the passage of the Pickett bill in

1910. Strike out after the word "withdrawal" all the rest of lines 10, 11, 12, and 13, on page 1, and all of line 1 on page 2, and the word "authority" in line 2 of page 2.

Mr. Andrews has spoken to you of the necessity for such legislation. We readily concede the necessity for such legislation, and I may say that there are three reasons that lie in my mind why such legislation ought, in all fairness, to be enacted. First, the supreme court of California, in the case of Miller *v.* Chrisman (140 Cal., 140) made a decision contrary to the doctrine laid down in the Yard case. The oil men of California have relied, for the purpose of initiating titles, upon that decision, and where they have relied upon the decision they ought to be protected. As I am informed, lawyers have advised them that the decision was sound. Second, there are vast money interests involved, and many men of large and small means—small as well as large—have put all they have into locations of the character referred to, and unless some immediate legislation is had a great number of people will go into bankruptcy. There is no other way out of it. I do not now recall that there is a third reason.

Mr. SHORT. Is it not true that a good many patents have been issued contrary to the doctrine in the Yard case?

Mr. PIERCE. I am not prepared to say that there have been.

The placer law to which this Yard case is addressed is found in section 2331 of the Revised Statutes, in which section the following language occurs:

> And no such location shall include more than 20 acres for each individual claimant.

That is contained in the statute, the placer statute, passed May 12, 1872, and the placer statute was extended to oil claims by the act of February 11, 1897 (29 Stat. L., 526). So that we are obliged to deal with oil placer claimants in the same way that we deal with other placer claimants on the public domain.

The Yard case was a case where a man by the name of H. H. Yard, with a few men who were dummies, undertook to locate something like 13,000 or 14,000 acres in the Plumas National Forest, of Susanville, Cal. The doctrine of the Yard case was applied to hold that these locations were invalid because the actual location preceded any discovery, and there was a conveyance by various men, who located, to another individual without discovery.

The CHAIRMAN. I make this suggestion in order to save time: The department having passed upon the matter in the Yard case and having applied the Yard decision to oil claimants, we must accept the decision of the department, and we would not think of asking the Secretary to rescind the decision. The question before us now is as to the necessity for legislation to relieve the oil situation under the Yard decision, and the form in which the legislation should be had.

Mr. PIERCE. Answering that, I will say that the Yard case referred to gold placer claimants before discovery, but that doctrine has been adopted by the department in a decision rendered day before yesterday, a copy of which I have here, in the case of the Bakersfield Fuel & Oil Co., and I would like to read it.

The CHAIRMAN. Unless the committee desires a discussion of that question—I think we are bound by the decision anyway——

Mr. ROBINSON. I would like to know the reasons for it.

Mr. PIERCE. With your permission I will read it.

BAKERSFIELD FUEL & OIL CO.

[Decided January 19, 1911.]

Placer location—Oil lands—Transferee.—A placer location of oil lands for 160 acres, made by eight persons and subsequently transferred to a single individual, invalid because not preceded by discovery, can not be perfected by the transferee upon a subsequent discovery to the full area so located, but only as to 20 acres thereof.

Corporation—Regarded as entity in acquiring public lands.—A corporation in acquiring title under the public-land laws must be regarded as an entity, with no greater rights than an individual.

Discovery—Prerequisite to initiation of title.—Discovery of mineral is an essential prerequisite to initiation of title under the mining laws.

Discovery subsequent to location—Doctrine of relation.—While discovery of mineral subsequent to location of a mining claim is sometimes held by the Land Department to relate back to the date of location, where there was no precedent discovery, the doctrine of relation can not be invoked to the disadvantage of intervening adverse claims nor to permit a locator to secure more land by indirect means than may be done directly.

PIERCE, First Assistant Secretary:

The Bakersfield Fuel & Oil Co., a corporation organized and existing under the laws of the State of California, appellant herein, applied for a patent to the Pitney No. 2 oil placer claim, containing 160 acres, situate in the Visalia (Cal.) land district. The Commissioner of the General Land Office held that the company could secure patent to only 20 acres and required it to elect which 20 acres it would take and to cast off the excess of 140 acres, basing his decision on the Yard case (38 L. D., 59). The company has appealed to the department.

On the 22d day of June, 1899, eight persons attempted to locate said 160 acres of land as a single oil placer mining claim. No discovery of oil or other mineral had been made. During the month of August, 1899, and before discovery, all of said eight persons conveyed their so-called claim to the appellant company, which sunk a well on the claim and actually discovered oil in paying and commercial quantities on the 25th day of September, 1900, at a depth of 1,207 feet. No oil or other mineral was discovered in the claim prior thereto.

The case has been exhaustively and ably argued by eminent counsel, and carefully prepared briefs have been filed. The law of the case is within narrow limits and was clearly announced in the Yard case (supra), that a placer location of 160 acres made by eight persons and subsequently transferred to a single individual before discovery can not be perfected by the transferee upon a subsequent discovery to over 20 acres. While the Yard case involved placer locations for gold and other precious minerals, it can not be distinguished from the case at bar. The placer law was applied to oil lands by act of Congress on February 11, 1897 (29 Stat. L., 526). The act of May 10, 1872, carried into the Revised Statutes as section 2331, declares that no placer location shall include more than 20 acres for each individual claimant. This is a limitation upon the size of an individual claim. The department has frequently held that a corporation in acquiring public lands is a single entity and has no greater right than an individual. (Igo Bridge Extension Placer, 38 L. D., 281, and other cases.)

Discovery of mineral is the one absolutely necessary prerequisite to the initiation of title to mineral lands on the public domain. Until discovery is made the so-called locators hold their possession by sufferance and not by right; until discovery is made they acquire no interest in the public domain and have nothing to convey. But it is pressed upon our attention that locations are frequently made without discovery of mineral and that upon discovery the claims relate back to date of location. It is true that the department often recognizes the validity of such locations by relation, but the doctrine of relation has never been invoked to the disadvantage of intervening adverse claimants, nor to permit anyone to secure more land in an indirect method than he could directly.

Appellant relies upon the case of Miller *v.* Chrisman (140 Cal., 140), in which the supreme court of California clearly decided adverse to the doctrine of the Yard case. While the department has great respect for the decisions of the State courts, it does not feel bound to follow them at all times. The case of Miller *v.* Chrisman was carried to the Supreme Court of the United States and there affirmed (197 U. S., 313). A careful and critical examination of the opinion of the Supreme Court of the United States convinces the department that that court did not intend to and did not adopt the doctrine laid down by the supreme court of California. There is no

ıggestion in the opinion that would warrant any such conclusion. It turned upon nother point, that the intervener had not made such a discovery as would entitle im to protection. We do not regard it as an authority in the case at bar.

It is pressed upon our attention that the method pursued by the appellant in its ttempt to acquire patent to public oil land has been the common method in use in alifornia for many years and that many patents have been issued under similar cirumstances. This is the first time the question has been presented to the department or decision. Whenever a new question is presented it must be decided upon the aw, and if the interpretation of the law works disadvantageously or inequitably elief should be secured through Congress; and in view of the situation existing the epartment has already called the attention of Congress to the facts and recommended emedial legislation in favor of those bona fide locators who have diligently prosecuted heir work to fruition. The decision is affirmed.

Now, it is to that doctrine in the Yard case that this bill is directed, ınd it is our opinion that these people who have invested their money, elying upon the custom in California—and perhaps many patents ıave been issued by the Commissioner of the General Land Office—ıhould be remedied.

The CHAIRMAN. The only question before the committee is that of remedying the situation created by the Yard decision, and in remedying that situation it seems to me that it is particularly important that we should raise no other questions. With that object in view, I have prepared very hurriedly in the last few moments three tentative suggestions, in the alternative and in lieu of the legislation before the committee. I desire to read them in order that they may go into the record and in order that they may be considered in connection with the legislation. These are merely tentative suggestions, hurriedly drawn. The first is:

That in passing on applications for patent under the placer mining laws to public lands chiefly valuable for the petroleum oil or gas, it shall be held to be immaterial whether the actual discovery of oil or gas in paying quantities was made by or on behalf of the original locators or by and on behalf of their transferees.

The next is a little different in form:

That in all cases where application shall be made for patent under the placer mining acts to lands chiefly valuable for petroleum or other mineral oils or gas heretofore located, it shall be held to be immaterial whether the actual discovery of oil or gas in paying quantities was made by or on behalf of the original locators or by or on behalf of their successors in interest.

The third is in a little different in form:

That patents shall not be denied to claimants whose claims have heretofore been initiated under the placer acts to lands chiefly valuable for the petroleum or other mineral oil or gas which they contain solely on the ground that an actual discovery of oil or gas was not made by the original locators, but such claimant shall be entitled to a patent if the claim shall be regular and valid in all other respects, whether the actual discovery of oil or gas was made by or on behalf of the original locators or by or on behalf of their transferees.

My reasons for attempting to confine the proposed legislation to the point at issue are numerous and I think they will be apparent to anyone who understands the situation. We do not raise the question as to the validity of any claim in any other way or as to any other right of the claimant. The purpose is to meet only the questions directly at issue. Whether these suggestions are in proper form to do that I am not entirely certain, but it seems to me that they do avoid the raising of several questions that are raised by the legislation before us, and which do not relate directly to the question now before us. I would be glad to have you study these at your

leisure, if you do not care to make a statement in regard to them at this time.

Mr. PIERCE. This bill was carefully prepared——

The CHAIRMAN. But this bill does go into other matters and raise other questions.

Mr. PIERCE. On hearing your proposals for the first time, I am not prepared to say whether they will cover the situation or not. I would not undertake to say; but my judgment is that the bill, with the amendments suggested by the Secretary, will cover the situation and give the remedial relief that is desired.

Mr. TAYLOR. Will this bill as it is drawn, with the amendments suggested by the Secretary and those suggested by the chairman, which are to a certain extent drawn in the alternative, afford relief to certain claimants who are assignees of the original locators? Some of them are trying to get patents at the present time, and they are held up, and they have expended many thousands of dollars on these locations. Will the bill allow these men to come in and get patents?

Mr. GRONNA. If it is necessary to induce capital to prospect land for oil to have 160 acres, why have a law that makes it necessary to use these dummies—because that is practically what it is? Why not give them 160 acres outright?

The CHAIRMAN. The question of a general amendment of the placer act is a very large one, and involves a great many different considerations. I doubt if at this time, and this late in the session, we can go into that large and involved question. But we can meet the question directly at issue so far as those who have heretofore located under the practice of the department and the decisions rendered are concerned.

Mr. ROBINSON. Does your amendment contemplate striking out the word "hereafter" in line 6?

Mr. PIERCE. Yes, sir.

Mr. ROBINSON. So that the bill as amended applies only to locations already made.

STATEMENT OF MR. FRANK H. SHORT.

Mr. SHORT. Reference has been made to sham or dummy locators. It is not the purpose of the bill to validate any locations that are invalid on account of the use of dummies. It applies only to qualified locators. In most instances the locators have organized corporations, have conveyed the property to the corporations, and, in many cases, have taken out equal quantities of stock. It is the purpose only to validate the locations that have been made in good faith and transferred in good faith to others, who have complied with the law. This bill has nothing to do with the general policy of the law, but is only to confirm honest claims located in good faith. For instance, one man has received a patent without the practice of fraud or concealment; his neighbor, whose case is identical, applies and is refused. Following the decision of the court and the procedure in the department, persons who have complied with the law and invested money in good faith and acquired in good faith the interests of bona fide locators, should receive their patents.

There has been invested in the State of California over $20,000,000 in developing oil lands and in the sinking of oil wells, and this investment

represents the holdings of at least 275 corporations and associations. And it represents not only the operators in the San Joaquin district of California, but it represents at least 75,000 investors, and perhaps a great many more, who are the holders of the stock in these corporations. This bill applies only to such investments as have been made in good faith. As the situation now is, we can not improve or sell, we can not borrow money, we can not mortgage the property, and we can not develop it. It is especially essential to a number of industries that depend on oil that this situation shall be relieved. The United States Navy is considering the adoption of oil as a superior fuel to coal. It is essential that where we have proceeded under the law, as I have stated, we should have the benefit of the certainty of the law. That is the reason we are urging Congress to act in the matter at this session. The necessity for prompt action is urgent and imperative.

We are not asking for any legislation to secure the validation of fraudulent claims, but only on behalf of honest claims that were made in good faith—claims on which we would have received patents but for this decision——

Mr. GRONNA. Have patents been issued prior to the time of the oil discovery?

Mr. SHORT. No, sir; but transfers have been made prior to the discovery; the purchasers or successors have gone in and in a year or two have spent from twenty to fifty thousand dollars in order to make a discovery.

Mr. GRONNA. Have the parties transferring these lands complied with the law?

Mr. SHORT. Yes, sir; as the law has been interpreted by the courts, and in accordance with the practice in the department, out of 175 patents issued 174 were issued to others than the original locators. So that the matter of discovery is not at issue—no patents are claimed or sought without discovery—but where the locators or their successors have acted in good faith they should receive their patents upon discovery.

The CHAIRMAN. Mr. O'Donnell, the committee would like to hear from you, as a practical oil operator, as to the practice and as to the necessity of the legislation, by reason of the fact that it has been a very common practice for the original locators, one or more of them, to transfer all or part of their interest before discovery.

STATEMENT OF MR. THOMAS A. O'DONNELL.

Mr. O'DONNELL. Mr. Chairman and gentlemen of the committee, I have to ask the indulgence of a committee of this kind when I appear before them, and ask them to assist me, as I am not as familiar as some of my associates with presenting cases of this kind. I appeared before this committee last spring when the Government proposed to withdraw the public lands in the West, and these withdrawals covered practically the entire oil district which we are interested in, the San Joaquin Valley. The bill proposed by Mr. Pickett at that time, as you gentlemen will call to mind, provided for giving the authority to the President to withdraw these lands absolutely from entry.

At the time we were advised by our attorneys in the West, and found that that was the general opinion when we got here, that we had no right as against the Government until we had made discovery.

We were unfortunately operating under a law that was not applicable to our work. It had not provided protection for us. Even if we were all the original holders and the original locators, we had no right as against the Government. At that time I presented for your consideration a great deal of data and some maps showing the actual condition there, and you gentlemen gave us very considerate attention and provided for us at that time the relief that we required by amending the Pickett Act, so as to protect those interests that were bona fide and those operators that were working on their lands in good faith and were actually in the process of drilling wells. At that time we went into the details proposed, to a great extent covering the abuses of the placer mining laws, which we all admit have been attempted from time to time, and I made the statement at that time as to the patents that had actually been issued in the San Joaquin Valley to the petroleum miner, the man who had actually made the discovery, that I had yet to find any one of those patents to be criticized.

Men have attempted to make locations to cover large areas, but they have never successfully contended against the department and secured patent. The discovery and development has proceeded to a large extent there on these Government lands. We have got one of the most wonderful industries in California to-day, in the world. We are producing 200,000 barrels of petroleum, to-day, which is required for the industrial development of California. It is one of California's greatest interests. We had not the coal in the years gone by; we had to import it into that country. That is perhaps all old to you people here, but I want to say this to you as a practical operator. I have spent 20 years of my life in these oil fields of California, from the floor of the derrick up to reasonable prosperity, and I think that I understand the business, the operating end of it, particularly, as well, perhaps, as most of the men who are engaged in that business there.

The CHAIRMAN. Right on that point, to what extent has it been the actual practice that the discovery was made after the original locators, or part of them, had parted with their interests to a greater or less extent?

Mr. O'DONNELL. That is what I was going to say, from my standpoint, from the standpoint of an operator, who is not familiar with the intricate interpretation of the law. Naturally, a man to go into that district as I have gone, had to act and operate and develop along the lines that he had seen before him, and as an operator; and this question of the legality of a transfer before discovery never entered my mind as an operator. I never for a moment at any time considered, in connection with the titles that I had bought for my associates in business, and promotions that I had made where I had induced capital to join with me and go into this business, that that entered into it. We would take it to any attorney in California, and he would advise us as to the examination of these obstructions, find out that there were no adverse claims down to us, and we would go right ahead and make the investment, and we have gone ahead on that basis. Now, the very first patent that was ever issued for oil, the first in California, or in the United States, patent No. 1—I got that information from Mr. Mondell, here—had

transfers for nearly two years before any actual discovery. In California, while a gentleman over here raised the question that perhaps the transfers were made after discovery in many instances, my judgment is that perhaps 95 per cent of all of the transfers that have been made in the organization and the development of the companies that are now operating these properties were made before discovery. It has been, gentlemen, an absolute necessity to have some kind of an organization in order to finance these developments.

Mr. PARSONS. Mr. O'Donnell, I wish you would explain just how you go about it, if you are going to make a location and exploration? What do you do to get your people in and get your money?

Mr. O'DONNELL. For instance, in Coalinga, where I have spent a great many years of my life, I might give you some history of my own development there. That is practically the only development I have ever made personally, up in that locality.

Mr. PARSONS. I wish you would.

Mr. O'DONNELL. I organized there as one of my early adventures what is known as the Octave Oil Co. I went to Los Angeles and secured the interest of my friends and former associates in the business. In that particular case the whole eight are yet the owners in the company of stock. We organized the Octave Oil Co. for $50,000.

Mr. PARSONS. All these located there?

Mr. O'DONNELL. Yes.

Mr. PARSONS. And then after the location, before the discovery, you organized the Octave Oil Co.?

Mr. O'DONNELL. We organized the Octave Oil Co. immediately. In fact, we had the Octave Oil Co. in mind, and had talked over even its name and its organization when we figured on going on this particular land. We assigned and made our deeds, as is the custom there, to this particular company for operating purposes.

Mr. PARSONS. When did you do that? I just want to get at the course you pursue.

Mr. O'DONNELL. Yes.

Mr. PARSONS. I appreciate that the law is rather technical, and economic necessity overrides it; or not necessarily overrides it, but it winds in and out among it. When did you make the deeds; as soon as you had located?

Mr. O'DONNELL. As soon as we had located, or shortly thereafter; as soon as they were recorded. The first stick of timber that went on the ground was in the name of this particular company, and the operation proceeded under the name of that company. Discovery was made several years ago, but we have not yet secured patent on that particular piece, on account of some parties claiming they had a gypsum discovery on one 40-acres of it before we had made our final entry. To-day, if we apply for patent, as I understand it, although that part has been cleaned up, the patent will be refused us except as to one 20-acre piece of that discovery, although we have it covered with wells.

Mr. TAYLOR. Mr. Parsons justs wants to know the general custom. I would suggest, if you can, that you give him not a concrete case, but the custom of doing.

Mr. O'DONNELL. There are all kinds of customs involved in developing this oil there. The original locators have many times gone far

into the front, and sometimes they have been able and sometimes not been able, to convince men of large means that they had a good prospect of securing oil.

Mr. PARSONS. Some of them drop out and others do not.

Mr. O'DONNELL. Yes; or perhaps they have sold their entire interests to other parties. I will give you another case that I am interested in, that I think will illustrate the point. There is a property there that I have recently organized, I and my associates, quite a large company, that were interested in the midway field. There was a 600-acre tract that was owned by various parties that have been operating on it for nearly seven years. The work on that particular tract had not been successful in a financial way. They had expended $420,000. They had in some instances made their discovery, and before we purchased they had made application for patent and received patent to one quarter section of it. They already had discovered on two of the other quarters at the time that we purchased it, and the assumption was that the regular procedure would continue, and we would get patent to these other quarter sections as they went through the official routine.

The CHAIRMAN. After the discovery was made?

Mr. O'DONNELL. Yes. Now, because of my experience in that field and my success as an operator I was able to induce men to believe in me and to believe that I knew the value of the property, and I secured capital to the extent of $900,000 for the purchase of this property. Now, you might say that this was Government land, and that was an exorbitant allowance, and where is this value created? Mind you, the men who had developed it had expended $400,000, covering seven years, and it was likely to prove a failure. I was able to make men with capital believe that I could make a success of it, and we have since spent $180,000 in development work, and I still believe it is going to be successful, although we have not taken out any money yet. Now, there is an instance of the way values are established in these claims.

Mr. GRONNA. And under the Yard decision you would be prevented from obtaining patents to the land?

Mr. O'DONNELL. We have made application to the department for patents, and they have sent back their forms—there are numerous forms that Mr. Pierce would not probably know anything about—and they have sent back and asked us to locate our 20 acres. Now the question is, did I have any right to go ahead and interest this money, and have the procedure we have had for 20 years in California?

Mr. GRONNA. You bought these claims?

Mr. O'DONNELL. Yes; we bought these claims.

Mr. GRONNA. What did you pay these parties for these claims?

Mr. O'DONNELL. $900,000; and these men had already invested $400,000 in development work that was likely to prove a failure, and it was only surrounding development that induced me to believe that there was greater value than they had discovered.

Mr. GRONNA. They had spent $400,000, extending over seven years?

Mr. O'DONNELL. Yes.

Mr. GRONNA. So that that, with the interest on the investment, would run up pretty well to the amount you paid?

Mr. O'DONNELL. Yes.

The CHAIRMAN. How deep is that oil?

Mr. O'DONNELL. About 2,500 feet, and it is very difficult drilling. There is a shattered formation there.

The CHAIRMAN. What does it cost to drill a well?

Mr. O'DONNELL. My judgment is that I will be able in time to do it at an average cost of $30,000 to $35,000 in that particular locality.

Mr. GRONNA. How much will it cost per foot?

Mr. O'DONNELL. That would be perhaps $14 or $15 per foot. It is not all as expensive as that. It is very expensive there on account of the geological conditions there. The top formations are shattered, and it is hard to get down.

The CHAIRMAN. And the deeper you go the higher the cost per foot?

Mr. O'DONNELL. Yes.

Mr. GRONNA. You have bought a part of these claims. Now, in case discovery of oil has not been made, what do you figure they have to do to comply with the law?

Mr. O'DONNELL. Abandon it.

Mr. GRONNA. Unless oil has been discovered?

Mr. O'DONNELL. Yes.

Mr. PIERCE. They are protected if they keep on working?

Mr. O'DONNELL. If they keep on working they are protected; if we keep on working until they make discovery, we are entitled to patents to it, and I might say very often our judgment is at fault, and we go out and start to drill these wells that are not a success. There are many of these wells that are drilled in California on these lands that are not a success.

Mr. TAYLOR. Mr. Secretary, is a man protected under the Pickett bill where he has been unable to hold on himself and where he has assigned to others and those assignees have not yet discovered?

Mr. PIERCE. I presume he would not be.

Mr. TAYLOR. But these men are entitled to protection?

Mr. PIERCE. No; it protects those who have located in good faith.

Mr. TAYLOR. If they have gone on and done as much as they could and their money has given out and they are not able to go ahead further and they have assigned to somebody else, he ought to be protected.

Mr. O'DONNELL. But at the time the Pickett bill went into effect we did not then know—I know that I had not any idea—that the Yard decision, which was a decision in a business other than what we were engaged in, would be applied to this particular business. If we had any right at that time to ask this committee to put in the Pickett bill a provision to enable us to finally get our titles, we now have the same right in asking you to perfect the titles up to this date on those propositions on which men have actually been in process of development in good faith. There are other provisions in the law which will be determined and looked after by the department, and if there are any abuses out there they will be taken care of.

Mr. PIERCE. Is that land you speak of under a withdrawal?

Mr. O'DONNELL. Yes; practically all of the lands in the San Joaquin Valley. I had some maps prepared, which I have here, that I know would not be interesting to the committee and would merely take up their time that show the entire field in one map—the San Joaquin

Valley covering the entire field—and it shows that no legislation of a remedial character which you might pass here would in any way affect the future development of these lands except that already operated on.

Mr. TAYLOR. What I want to get at is whether or not this bill is broad enough to cover this or whether you will not have to come back here a year from now to get another amendment to protect the rights of these people?

Mr. O'DONNELL. I think so. I am not an attorney and am not prepared to pass upon it in a legal way. All we are asking is that our claims be allowed to us if they are legal, and we have complied with all the law except the transfers, and we want the transfers validated in those claims that are otherwise approved and nothing else. We do not expect to get anything else, because these lands are withdrawn at this time, and my judgment is that they will remain withdrawn and no new rights will be initiated until some legislation is passed by Congress for future disposition of these lands, because it is generally believed that the placer-mining law is not applicable to oil mining.

STATEMENT OF MR. CHARLES H. TREAT, OF LOS ANGELES, CAL.

The CHAIRMAN. I shall have to ask you to be very brief, Mr. Treat, and to confine what you have to say before the committee directly to the matter at issue, as to the necessity of this remedial legislation.

Mr. TREAT. I have listened, Mr. Chairman, to the remarks of Secretary Pierce, and taken note with regard to the lines and the wording that he recommended be struck out of this bill. I also listened with great interest to the reading by the secretary of what he suggested in regard to legislation in this bill. There is no question but what remedial legislation should be given to the people who have gone onto these lands in good faith and spent thousands of dollars in the effort to discover oil, and I am in entire harmony with the bill, with those sections stricken out as suggested by Secretary Pierce. There are many questions to be discussed in connection with the oil business other than those covered by these bills, but so far as this bill goes, representing the Oil Conservation Association of California, I believe it should pass.

The CHAIRMAN. We are very glad to have heard from you, Mr. Treat.

Mr. ROBINSON. Is there any one here representing the opposition to the bill, or is there any opposition?

The CHAIRMAN. I do not know of any.

Mr. SHORT. Not to the bill with those certain provisions that have been agreed to be stricken out, taken out of the bill; there is no opposition.

Mr. TREAT. If there had been anyone to oppose this bill I probably would have been the one to oppose it, and the striking out of these provisions in here, whereby the withdrawal act of September 27, 1909, is not invalidated, makes the bill acceptible to myself and my friends. This association is an association of the smaller operators of southern California.

Mr. SMITH. May I say just a word?

The CHAIRMAN. We will be very glad to hear from the Director of the Geological Survey.

Mr. PARSONS. Just one more question. Do those small operators find some legislation in relief of the present situation necessary?

Mr. TREAT. They do; they certainly do. All the titles are affected, no matter whether a man holds 40 acres or 5,000 acres. The conditions are the same.

Mr. PARSONS. Just one more question. What are the holdings of the small operators; 160-acre tracts?

Mr. TREAT. They will average anywhere from 20 acres to 160 acres.

Mr. ROBINSON. Are they relatively great in number, or few in number?

Mr. TREAT. They are great in nnmber.

Mr. ROBINSON. I believe we went through that in the last Congress, as to the relative number of the small and large operators.

STATEMENT OF GEORGE OTIS SMITH, DIRECTOR OF THE UNITED STATES GEOLOGICAL SURVEY.

Mr. SMITH. I desire simply to supplement Mr. O'Donnell's answer to Mr. Taylor's question. Last year when we appeared before the committee the gentlemen from California were asking for remedial legislation to protect them from the injustice they thought might come to them as the result of the withdrawals then in effect, and I think this committee in its proviso added to the Pickett bill afforded such relief. At that time I was before the committee and became interested in some other phases of the question. This fall I went into the field, and I am in hearty sympathy with the gentlemen from California when they again come before the committee and ask for remedial legislation on account of injustice which they think will come to them through the enforcement of the Yard decision. Again, I am glad to say that I am in harmony with them, because I saw in the field so many cases where the law, as they understood it, had been complied with. I think that the legislation should be enacted simply on the ground of equity to the operators.

Now, the question of Mr. Taylor, to which Mr. O'Donnell made partial answer, to which I would like to add, was whether there would be need for further remedial legislation. I think that the oil operators and all interested in the proper development of the oil industry will come before this committee for further legislation.

Mr. TAYLOR. Mr. Smith, let me ask you this. I received a communication from a number of people in Colorado, here about two weeks ago, and I wrote to the Department of the Interior and asked them if there was any relief from that situation, and they answered my letter saying that it had not been decided, and declined to advise me as to whether or not the people were safe in going ahead. The situation was one where people had gone ahead and drilled. Suppose they have gone down to 500 feet, and have exhausted their money, and they sell to another bunch of men, and they drill farther and their money gives out and they sell to a third lot of people, and they are going ahead now; they want to know whether, not being original locators, they are safe in going ahead and spending $50,000 or $100,000 more; and they want to know if, having done that, when

they go and apply for patents they will be rejected. I want to know whether this law protects that class of people.

Mr. SMITH. I think it is the purpose of this bill to protect that class of people.

Mr. TAYLOR. I have been unable to get the department to answer it, and they have acted very properly in that, because they did not want to decide cases in advance, they said.

The CHAIRMAN. They have answered it, Mr. Taylor.

Mr. TAYLOR. I see now they have, but they answered me about two days before in the way I have described.

Mr. PIERCE. I had not got my decision completed.

Mr. SMITH. I think there will be need of further legislation, but we can go one step at a time. I think it is of the utmost importance that we remedy the past. Now, we will have present and future difficulties with the application of the placer law to the disposition of oil lands, and there is such a bill before the Senate committee.

Mr. TAYLOR. Is there?

Mr. SMITH. Yes, sir.

Mr. TAYLOR. Has the Department of the Interior framed what they think would be a workable oil and gas law to supplement this placer mining law that never contemplated this kind of an application?

Mr. SMITH. The department has cooperated with the Senate committee and Senator Flint introduced such a bill at the time he introduced the bill that has been introduced in the House by Mr. Smith.

Mr. TAYLOR. Our chairman has not been requested to introduce it.

Mr. GRONNA. You are in favor of this bill?

Mr. SMITH. I am decidedly in favor of this bill, by itself or in conjunction with the mining bill.

Mr. GRONNA. With the amendments proposed by Secretary Pierce?

Mr. SMITH. Yes; which was the department's report on the bill.

The CHAIRMAN. The chairman has not seen his way to introduce just that kind of a bill. Are there any other gentlemen to be heard?

Mr. MCLACHLAN. I do not care to say anything, Mr. Chairman. Of course I come from this section where nearly all the capital is furnished for this development. I know, as a matter of fact, gentlemen, that many a good man in Los Angeles has gone broke believing that they were operating under the laws existing. This Yard decision has upset everything of that kind, and many a man has spent his whole fortune in the development of lands under a misconception of the law as interpreted by the Interior Department, and if this law covers the case in giving relief to those who have already expended their money under a supposed condition of the law, I am sure that all will unite in agreeing upon this bill. I know of no one now who is objecting. It covers that one point of bringing relief to those who have gone on in good faith to make development.

The CHAIRMAN. Yes. Perhaps the chairman can, from his own experience, a little further illuminate the placer points. The chairman is not, fortunately, the owner or claimant of any oil land at this time, nor has he been for some years. He had his sad experience in that regard many years ago. I had some acquaintance with the proceedings leading up to patents Nos. 1 and 2 of oil land under the placer act.

One of those patents, either No. 1 or No. 2, I am not sure which, is now the town site of the town in which I live. After a few patents had been issued the department, in the Union Oil case, held that the placer act did not apply, and early in my service in Congress I introduced the bill which extended the placer acts to oil lands. In our State there have been a very great many locations of oil lands made under the placer act. In many instances those locations were made by hardy pioneers who went out into the valleys and observed and found geological conditions which they believed indicated oil, and made their locations. In the majority of instances, I think, the original locator makes an earnest attempt to make a discovery, and often a very determined attempt. But some time along through the process of attempting to make a discovery of oil in paying quantities by a well, the original locator, if he is not a man of wealth, is likely to be frozen out. If the depth to oil is great the original locators will gradually convey to others more able than they to carry on the work. Sometimes, as Mr. O'Donnell has stated, the location is made with a view of immediately organizing a company of the locators for the purpose of proceeding to the development under corporate form. Oftentimes, however, the locations are made with the view of going on as a copartnership, and from time to time transfers are made, as the difficulties of making an actual discovery develops.

There is no question but that the department has patented a large number of entries where the original locators have, in whole or in part, transferred their claims before discovery. The probability is that in the great majority of claims patented some of the original locators, perhaps a majority of them, have ceased to have an interest in the claims when discovery is made, and that often occurs after an exceedingly painful experience on the part of the locator in attempting to make a discovery where the oil lies deep.

I only want to add this: The necessity of this legislation is clearly apparent. There is no question as to the wisdom and propriety and justice of it. The chairman has some reservations about the bill before us for this reason. I think it is exceedingly important always, in settling one question not to raise another. Where the question at issue is clear and well defined, it ought to be met in language so simple that it can not by any possible interpretation raise any question other than that intended to be settled.

I do not think that at this time we should either attempt to enlarge or further restrict the right of withdrawal. That is now fixed and established by statute, and any legislation relating wholly to the question of when discoveries are made should not by any possibility contain any language that can affect, one way or the other, the situation with regard to withdrawals, a situation that is now satisfactory in that the power is with the President, and is recognized. Further, I think that the legislation in its present form might raise questions, which are in no wise involved in the point at issue, the matter at issue being simply the question whether Congress shall authorize the Interior Department, in passing upon locations heretofore made, not to refuse a patent simply and solely on the ground that the discovery was not made by or on behalf of the original locator. That is the only question before us and that is the question we ought to meet in a very brief statement that does not involve

any construction of any other feature of the placer act, I think we can settle that question in language brief and clear and to the point, without raising some other questions which I fear the legislation before us does raise.

Mr. ROBINSON. May I make a suggestion in that connection, that copies of your tentative provisions be submitted to these gentlemen and to Mr. Secretary Pierce, and that they may file, as speedily as convenient, such comment on the same as they desire?

The CHAIRMAN. Does the gentleman make that as a motion?

Mr. ROBINSON. I make it as a motion. That will obviate all necessity for further hearing.

The CHAIRMAN. That will be done, with the idea that those are hurriedly drawn and not believed to be perfect, but are simply intended to embody the idea I have in mind.

Mr. PIERCE. Mr. Mondell, will you not elaborate them before you send them down to us?

The CHAIRMAN. Well, I would rather like to have the department do that. But the third proposition occurs to me to be perhaps the best; it simply provides that in passing upon applications for patent on locations heretofore made the patent shall not be denied solely on the gound that the discovery was not made by or on behalf of the original locator, but that the claim being otherwise regular, legal, and entitled to patent, the patent shall issue.

Mr. TAYLOR. You say it shall not be denied solely on that ground. Why should it be denied partially on that ground?

The CHAIRMAN. I say, that the patent shall not be denied wholly or solely on that ground.

Mr. TAYLOR. Or even in part on that ground?

The CHAIRMAN. The gentleman's selection of a word is probably better than mine.

Mr. ROBINSON. Mr. Taylor means to ask you why his action should be considered at all—that is, why should you say "solely"?

The CHAIRMAN. The other proposition puts it the other way, that in passing upon this question the question as to when the discovery is made shall not be considered at all. Perhaps that is better.

Mr. TAYLOR. I think that is better.

The CHAIRMAN. Perhaps that is the better way to put it, that in passing upon entries the question of date of discovery shall not be raised.

Mr. TAYLOR. As to who made the discovery or when he made it.

The CHAIRMAN. Yes; it being shown that a discovery was made.

Mr. TAYLOR. It is made, and that is enough.

The CHAIRMAN. Without involving the other questions which may arise as to how much land that discovery gave title to, and as to whether or not he was entitled to a patent under the terms of withdrawal. These are questions which we ought not to touch at this time in passing upon this one feature of the situation, and if we can legislate by reference only to the matter directly in hand I think it is better than to legislate in a way which may—I do not say it will, but which may—raise other questions.

(At 12.20 o'clock p. m. the committee adjourned.)

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